

# TAX ALERT

## ‘Bus Transport Hiring’ Service Availed By Manufacturers For Transportation Of Employees Eligible As Input Service

BT Associates is a premier Indirect Tax Consultant in Kolkata, delivering high quality services to clients in the area of Indirect Taxation. The firm covers the entire range of indirect taxes including specialized service offerings that are specific to different business needs.



### Founder Member



**Bhaskar Thakkar**  
Chief Executive Officer  
BT Associates, India  
thakkar@btassociate.com

Twenty years of experience in Indirect Tax practice, specialist in Structuring & Planning and tax optimization under Indirect Tax. Lead eastern India Indirect Tax Practice of Ernst & Young in past.

Services used in relation to business of manufacturers qualify for input services if it satisfies the definition as provided under Rule 2(l) of Cenvat Credit Rules, 2004 (herein after referred to as CCR). Dispute discussed here under relates to credit eligibility of tax paid on service of hiring buses for transportation of employees availed by manufacturers. Contract for hiring of buses does not leave any room for doubt that the fixed consideration is for specified distance to be covered every month for transportation of employees to and from the factory. No evidence has been furnished on behalf of Revenue that the buses were used for any other purpose. 'Rent-a-cab-service' availed by hiring of buses for transportation of employees is an Input service. Credit is admissible of service tax paid.

## HINDALCO INDUSTRIES LTD<sup>1</sup>

**Issue:** Whether the service of hiring of buses for transportation of employees fall within the definition of input service so as to allow the availment of credit of service tax paid.

**Facts:** The appellant is engaged in manufacturing activity. It avails the services of hiring of buses which is used for transportation of employees to and from the factory. The fixed consideration is paid to the contractor and service tax is paid on such 'Rent-a-cab' service. The appellant avails and utilize the credit of service tax paid, treating the same as input service used in relation to its business. However, the adjudicating authority rejected the claim of Cenvat credit on rent-a-cab service on the premise that such service has not been used directly or indirectly in the manufacturing activity. Thus do not qualify as input service.

### Revenue contention:

- The rent-a-cab service availed by hiring of buses for transportation of employees was not considered to have any nexus with the manufacturing activity and thus not used in relation to manufacturing. Thus, it do not qualify as input service and the credit is not admissible.
- Revenue contended that such service was for employees and relied on the decision of the **Hon'ble High Court of Calcutta in Manikgarh Cement<sup>2</sup>** where, the credit of tax paid on services such as repairs, maintenance and civil construction at the residential colony established by the assessee for the benefit of the employees, was disallowed holding that the activity has to be integrally connected with the business of the assessee.
- Further the Revenue relied on the order of the **Hon'ble Tribunal in Force Motors Ltd<sup>3</sup>**. where, the credit of the tax paid on services such as the use of mobile phones

and maintaining the vehicle facilities to their employees was disallowed, holding that use of any service for business purpose must be ascertained.

- Revenue also referred to paragraph 10 of the contract between the assessee & service provider, which provides for the use of the buses for social activities without any extra payment. Thus stating that the service is also used for purposes other than for business.

### Appellant contention:

- Tribunal previously issued the order in favour of the assessee in its own case where it was held that the transportation of employees by hiring of buses was used directly or indirectly in the output of the assessee. Such judgment was taken referring to the decision of the **Hon'ble High Court of Bombay in Ultratech Cement Ltd.**, which interpreted the definition of input service as defined in Rule 2(l) of CCR.
- It produced the contract for hiring of buses and the invoices raised by the contractor which clearly indicate that tax has been charged for providing 'rent-a-cab service' and that the vehicles were deployed for transporting employees between workplace and place of stay.

### Hon'ble Mumbai Tribunal made the following observations:

- In the appellant's own case this Tribunal has held that 'rent-a-cab service' is an eligible input service.
- **Hon'ble Supreme Court in Ultratech Cement Ltd<sup>4</sup>**. held that the definition of input service in Rule 2(l) of CCR, when read as whole also covers services which have **direct nexus or which are integrally connected with the business of manufacturing** the final product. These

services are in addition to the services used directly or indirectly in relation to the manufacturing activity. The definition is not intended by the Legislature to be read restrictively. Moreover the services mentioned in inclusive part of definition is only 'illustrative and not exhaustive'. Thus the rent-a-cab service is an input service and thus applicable for Cenvat credit.

As far as discountenance any part of the claim is considered because of alleged use of the same service for purposes other than business, the contract does not leave any room for doubt that the fixed consideration is for a specified

distance to be covered every month for transportation of employees to and from the factory. No evidence has been found to establish that the buses were used for any other purpose. Thus the clause in paragraph 10 in the contract, pointed out by Authorized Representative of Revenue can be considered to be a provision for a contingency only.

**Held:** On the basis of aforesaid observations, Hon'ble Tribunal allowed the credit to the appellant considering the rent-a-cab service in form of hiring of bus for the transport of employees between workplace and place of stay to be eligible input service.

<sup>1</sup>2016-TIOL-3173-CESTAT-MUM

<sup>2</sup>2010 (20) STR 456

<sup>3</sup>2009 (16) STR 616 (Tri-Mumbai)

<sup>4</sup>2010 (260) E.L.T. 369 (Bom.)

